

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LINDA AMES,

Plaintiff,

v.

WELLS FARGO BANK NA,

Defendant.

CASE NO. C23-5986 BHS

ORDER

THIS MATTER is before the Court on defendant Wells Fargo Bank NA's motions to dismiss, Dkt. 18, and for a vexatious litigant ruling, Dkt. 24, and on pro se plaintiff Linda Ames's final motion for summary judgment, Dkt. 51. This is at least the fourth lawsuit Ames has filed seeking to preclude or overturn the 2013 foreclosure of a deed of trust on her Vancouver Washington home.

I. BACKGROUND

In 2006, Ames borrowed \$590,000 from Sierra Pacific Mortgage, evidenced by a promissory note and secured by a deed of trust on her Vancouver home. *See* Dkt. 19¹ at

¹ Wells Fargo's Federal Rule of Evidence 201(b)(2) Request for Judicial Notice, Dkt. 19, includes documents referenced in Ames's complaint and/or documents that were publicly

1 Exhibits 1, 2. The note was securitized and sold to HSBC Bank and Wells Fargo was the
2 loan servicer. Dkt. 19 at Exhibit 3.

3 Ames defaulted on her loan when she stopped making payments in 2011. *Id.*
4 HSBC commenced a nonjudicial foreclosure in 2012. The foreclosure sale was scheduled
5 for August 9, 2013. *Id.* at Exhibit 5.

6 On August 5, 2013, Ames sued in Clark County Superior Court, seeking to stop
7 the sale. *Id.* at Exhibit 7. Notwithstanding Ames's first lawsuit, the trustee's sale was
8 completed in November 2013. *Id.* at Exhibit 3. Ames did not vacate the property, and an
9 unlawful detainer action was commenced against her in 2014. She asserted again that the
10 foreclosure was wrongful. She lost, appealed, and the Court of Appeals affirmed.

11 In 2015, Ames sued again in Clark County, asserting claims for quiet title and
12 wrongful foreclosure, among other claims. In 2016, the Clark County Superior Court
13 dismissed all her claims on summary judgment. Ames appealed again. In November
14 2019, the Washington Court of Appeals affirmed. Dkt. 19 at Exhibit 3.

15 In March 2020, Ames sued Wells Fargo again in Clark County, asserting wrongful
16 foreclosure, conversion, fraud, and conspiracy claims. Wells Fargo removed the case to
17 this Court. *See Ames v. Wells Fargo*, Cause No 20-cv-5246 BHS-DWC, at Dkt. 1. In
18 August 2020, this Court adopted Magistrate Judge David W. Christel's Report and
19 Recommendation (R&R), concluded that Ames's new claims were precluded by
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22 recorded. These documents' accuracy cannot reasonably be questioned, and Wells Fargo's
Request for Judicial Notice is **GRANTED**.

1 collateral estoppel, and dismissed her complaint with prejudice. Dkts. 18 (R&R), 22
2 (Order), and 23 (Judgment). Ames did not appeal.

3 In March 2023, Ames sued a fourth time, this time in federal district court for the
4 Northern District of California. Dkt. 1. She asserts claims for violations of 12 C.F.R. §
5 1026 and California Code § 2941.7, for failure to timely record a satisfaction of
6 mortgage. Dkt. 1. She again asserts “pendant” claims for wrongful foreclosure, fraud,
7 concealment, misrepresentation, and civil conspiracy. *Id.*

8 Ames’s new complaint asserts that Wells Fargo told her to stop making payments
9 (in 2011), and contends that she learned only a year ago that the Private Mortgage
10 Insurance (PMI) she was required to purchase actually “satisfied” her mortgage when she
11 defaulted. She asserts that because Wells Fargo recovered the insurance proceeds, it was
12 not entitled to foreclose, and she should be permitted to keep her home despite not paying
13 off her loan. Indeed, she asserts that, based on the insurance payment, Wells Fargo has
14 been “unjustly enriched \$770,000.” Dkt. 51 at 4.

15 The Northern District of California transferred the case here, over Ames’s
16 objections that the dispute should be resolved in California under California law even
17 though the property, the contract, and the sale were all in Washington. Dkts. 32, 33, 36.

18 Wells Fargo’s motion to dismiss was initially filed in the Northern District of
19 California, and was re-noted for this Court’s consideration after the transfer. Dkt. 18.
20 Wells Fargo argues that Ames’s claims are barred by res judicata and/or collateral
21 estoppel, even if they are slightly different than the claims that have been conclusively
22 dismissed in three prior cases. Because Ames has filed multiple lawsuits based on the

1 same set of operative facts, Wells Fargo also seeks an order finding Ames to be a
2 vexatious litigant. Dkt. 24.

3 Ames seeks summary judgment on her claims, arguing that Wells Fargo satisfied
4 her mortgage through the PMI her lender required her to purchase in 2011, and that she is
5 therefore entitled to judgment as a matter of law. Dkt. 51 at 4–11.

6 The issues are addressed in turn.

7 II. DISCUSSION

8 Dismissal under Fed. R. Civ. P. 12(b)(6) may be based on either the lack of a
9 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
10 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A
11 plaintiff’s complaint must allege facts to state a claim for relief that is plausible on its
12 face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has “facial plausibility”
13 when the party seeking relief “pleads factual content that allows the court to draw the
14 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Although
15 the court must accept as true the complaint’s well-pled facts, conclusory allegations of
16 law and unwarranted inferences will not defeat an otherwise proper 12(b)(6) motion to
17 dismiss. *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Spewell v.*
18 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “A plaintiff’s obligation to
19 provide the grounds of his entitlement to relief requires more than labels and conclusions,
20 and a formulaic recitation of the elements of a cause of action will not do. Factual
21 allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl.*
22 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up). This requires a plaintiff to

1 plead “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*,
2 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

3 On a 12(b)(6) motion, “a district court should grant leave to amend even if no
4 request to amend the pleading was made, unless it determines that the pleading could not
5 possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal.*
6 *Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990). However, where the facts are not in
7 dispute, and the sole issue is whether there is liability as a matter of substantive law, the
8 court may deny leave to amend. *Albrecht v. Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

9 Res judicata, also known as claim preclusion, bars litigation in a subsequent action
10 of any claims that were raised or could have been raised in the prior action. *Owens v.*
11 *Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). “A final judgment on
12 the merits of an action precludes the parties or their privies from re-litigating issues that
13 were or could have been raised in that action.” *Allen v. McCurry*, 449 U.S. 90, 94 (1980).
14 Res judicata is applicable whenever there is (1) an identity of claims, (2) a final judgment
15 on the merits, and (3) identity or privity between parties. *Owens* at 713.

16 Collateral estoppel, or issue preclusion, bars the re-litigation of issues actually
17 adjudicated in previous litigation between the same parties. *Clark v. Bear Stearns & Co.*,
18 966 F.2d 1318, 1320 (9th Cir. 1992). Collateral estoppel applies to preclude re-litigation
19 of an issue when the following factors are satisfied: “(1) the issue at stake was identical in
20 both proceedings; (2) the issue was actually litigated and decided in the prior
21 proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the
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1 issue was necessary to decide the merits.” *Janjua v. Neufeld*, 933 F.3d 1061, 1065 (9th
2 Cir. 2019) (quoting *Oyeniran v. Holder*, 672 F.3d 800, 806 (9th Cir. 2012)).

3 As it did in successfully moving for dismissal in the 2020 case, Wells Fargo
4 argues persuasively that this case is simply another bite at the same apple; Ames is again
5 asserting wrongful foreclosure, fraud, misrepresentation, and conversion claims against
6 Wells Fargo, all arising out of the 2013 foreclosure of her home. Those claims have all
7 been previously asserted, and previously dismissed, with prejudice.

8 Wells Fargo argues that any claim that Ames did not specifically assert in one of
9 her prior cases nevertheless *could have been* asserted previously; they all arise out of the
10 same transaction. Dkt. 31 at 2 (citing *In re Prather*, 50 Cal. 4th 238, 260 (2010) (Moreno,
11 J., concurring) (“[R]es judicata bars the litigation not only of issues that were actually
12 litigated in the prior proceeding, but also issues that could have been litigated in that
13 proceeding.”) (quoting *Zevnik v. Superior Court*, 159 Cal. App. 4th 76, 82 (2008))).

14 Wells Fargo again argues that Ames waived her core wrongful foreclosure claim
15 by failing to enjoin the sale. It also argues that, even if they had not already been
16 adjudicated, Ames’s post-sale “independent” fraud claims are barred by RCW
17 61.24.127(2)’s two year limitations period.

18 Ames’s response does not directly address most of these points. She primarily
19 asserts that, under California’s “primary rights” doctrine, a plaintiff is permitted “to file
20 as many actions as he has separate and distinct claims.” Dkt. 31 at 1 (citing *Brown v*
21 *County of San Joaquin*, 601 F. Supp. 633 (E.D. Cal. 1985)). She contends her claim—
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1 that when the PMI paid her mortgage after her default, her mortgage was “satisfied”—is
2 new, and is therefore not precluded by the final judgments in her prior lawsuits.

3 The Court does not agree. This “satisfaction” claim is directly related to Ames’s
4 prior claims and lawsuits against Wells Fargo arising out of the 2013 foreclosure of the
5 deed of trust she granted as security for her promise to re-pay her loan. It could have been
6 litigated in her initial lawsuit arising out of those facts. It is precluded by res judicata, as a
7 matter of law.

8 The Court also notes that Ames’s “satisfaction” argument is not a viable claim,
9 even if it was raised in her first lawsuit. PMI protects the lender from the increased risk of
10 default, either because the borrower has poor credit or because the borrower does not
11 have a sufficient down payment. It is not insurance for the benefit of the borrower that
12 pays off her mortgage if she defaults, and then obviates the need for the borrower to pay
13 back her loan. It would be a bizarre result indeed if a borrower who was forced to
14 purchase PMI could default, and then claim the mortgage was “fully satisfied” because
15 the PMI paid the lender when the borrower could not. As a result, the borrower would not
16 have to repay the loan and the security would revert to the borrower. Ames has cited no
17 authority supporting this theory, and there is none. Such a scheme would incentivize
18 borrowers to default. This claim is not viable, as a matter of law.

19 For these reasons, Wells Fargo’s motion to dismiss this case as precluded by the
20 final judgments in three prior cases arising from the same events is **GRANTED**. Ames’s
21 claims are **DISMISSED** with prejudice and without leave to amend.
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1 The Court will not yet enter a vexatious litigant bar order based on Ames's
2 repeated efforts to litigate the same claims. The motion for entry of such a bar order is
3 **DENIED** without prejudice. Any future complaint arising out of this same transaction
4 will be assigned to this Court as related to the prior two cases. The Court may re-visit the
5 issue in that event.

6 Ames's motion for summary judgment is **DENIED** as moot.

7 The Clerk shall enter a **JUDGMENT** and close the case.

8 **IT IS SO ORDERED.**

9 Dated this 8th day of January, 2024.

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12 BENJAMIN H. SETTLE
13 United States District Judge
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